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UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of)	
Hope Fair Housing Center,)	
)	
Charging Party,)	
)	HUDALJ No.
vs.)	FHEO Case No. 05-04-0927-8
)	
Arlington Park Racecourse, LLC, and)	
Churchill Downs, Inc.,)	
)	
Respondents.)	
)	

CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about June 24, 2004, Complainant Hope Fair Housing Center, an aggrieved party, timely filed a verified complaint with the U.S. Department of Housing and Urban Development (“HUD”), alleging that Respondents Arlington Park Racecourse, LLC and Churchill Downs, Inc., discriminated against Complainant on the basis of familial status and national origin in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the “Act”).¹

The Act authorizes the issuance of a Charge of Discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has redelegated to the Regional Counsel (67 Fed.Reg. 44234), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Office of Fair Housing and Equal Opportunity, Region V Director has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on familial status, and has authorized the issuance of this Charge of Discrimination.

¹ The Determination found reasonable cause to believe that Respondents discriminated against Complainant because of familial status in violation of 42 U.S.C. § 3604 (a), (b) and (c), but found no reasonable cause to believe Respondents discriminated against Complainant on the basis of national origin in violation of the Act.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondents Arlington Park Racecourse, LLC and Churchill Downs, Inc. (collectively "Arlington") are charged with discriminating against Complainant Hope Fair Housing Center ("Hope"), an aggrieved person, based on familial status in violation of 42 U.S.C. § 3604(a), (b) and (c) of the Act as follows:

1. It is unlawful to refuse to negotiate for the sale or rental of a dwelling, or to otherwise make unavailable or deny a dwelling, to any person because of familial status. 42 U.S.C. § 3604(a).
2. It is unlawful to discriminate against any person in the terms, conditions or privileges in connection with the rental of a dwelling, or in the provision of services in connection therewith, based on familial status. 42 U.S.C. § 3604(b).
3. It is unlawful to make or publish any statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on familial status or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).
4. "Familial status" is defined by the Act as one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals. 42 U.S.C. §3602(k).
5. Complainant Hope is a not-for-profit fair housing advocacy organization located in Wheaton, Illinois whose mission is to eliminate housing discrimination and ensure equal housing opportunity in the greater Chicago area, and specifically the west and northwest suburbs of Chicago. Toward that end, Complainant Hope investigates and files complaints of housing discrimination, conducts fair housing "testing" and participates in advocacy initiatives designed to address the issue of housing discrimination on the basis of race, color, religion, sex, disability, familial status or national origin.
6. Respondents are the owners and operators of the Arlington Park Racecourse, located in Arlington Heights, Illinois, a northwest suburb of Chicago. Respondents Arlington own and operate the racetrack and its attendant facilities, including the backstretch area², where racetrack workers are housed and thoroughbred racehorses are stabled.
7. During horseracing season, which runs each year from May through September, Respondents provide housing on the backstretch for racetrack employees and, where applicable, their families. The trainers who employ the backstretch workers pay a deposit to Respondents for units occupied by their employees and their employees' families. Respondents are responsible for assigning the employees' units.

² The "backstretch" is so-named because its facilities are located on a stretch of land at the "back" of the racetrack.

8. The backstretch housing consists of dorm-style units, which are simple sleeping rooms, with no kitchens or bedrooms. The units measure between approximately 111 and 145 square feet per unit. Up until late 2004, dorm units were provided in eight buildings. In late 2004 and early 2005, Respondents constructed two more dorm buildings, for a total of ten dorm buildings on the backstretch.³
9. Respondents admit that in making dorm unit assignments for backstretch workers with children, it excludes families with children from living in buildings 4-8, which, until recently, were the only buildings with private baths. On information and belief, backstretch workers with children are also excluded from living in building 1.⁴ Through the end of the 2004 racing season, Respondents assigned all families with children to Dorm buildings 2 and 3.⁵ On information and belief, since the start of the 2005 racing season, approximately half of the backstretch workers with children are housed in the two new dorms, with the remainder residing in Dorm building 2.
10. On information and belief, Respondents have published their policy of excluding children from living in buildings 1 and 4-8 by distributing the policy in writing in both Spanish and English to backstretch workers; and by sharing the policy with trainers whose employees live in the backstretch, Respondents' own employees, members of the Arlington Backstretch Coordinating Committee, including Complainant, and even the press.
11. At all relevant times, Dorm building 2 was considered the main "family dorm," and exclusively housed families with children. On information and belief, Dorm 2 has 127 units, only 120 of which were occupied during the 2004 racing season. Tenants share communal bathrooms. During the 2004 racing season, 460 tenants lived in Dorm 2, 237 of whom were minor children.
12. At all relevant times, Dorm building 3 was considered the "overflow" dorm for families with children, which is mainly occupied by tenants without children. On information and belief, Dorm 3 has approximately 159 units, only 132 of which were occupied during the 2004 racing season. Of those 132 units, 89 units housed tenants without minor children and the remaining 43 housed families with minor children. Tenants share communal bathrooms. During the 2004 racing season, 270 tenants lived in Dorm 3, 45 of whom were minor children.
13. At all relevant times, Dorm building 1, was considered an "adult dorm," where families with children were prohibited from living.⁶ On information and belief, Dorm 1 had 159

³ Respondents' answer to the HUD complaint indicates that Respondent Churchill Downs, Inc. exercised its authority to release the funds and order the construction of the new dorm facilities.

⁴ Respondents' exclusion of families with children includes families with only teenaged children.

⁵ Backstretch workers without children can live in any of the buildings, and a few reside in building 3, alongside families.

⁶ It appears that one exception was made to this policy in that, in 2004, one family with two minor children were permitted to occupy one unit in Dorm 1.

units, only 128 of which were occupied during the 2004 racing season. Tenants share communal bathrooms. During the 2004 racing season, 204 tenants lived in Dorm 1, 2 of whom were minor children.

14. At all relevant times, buildings 4-8 were considered “adult” dorms, a grouping of buildings where families with children were prohibited from living. On information and belief “adult” Dorms 4-8 had 120 units, only 99 of which were occupied during the 2004 racing season.⁷ Each of the 120 units in Dorms 4-8 has a private bath with a toilet, sink and shower. During the 2004 racing season, 172 tenants lived in Dorms 4-8, none of whom were minor children.
15. In or around April 2003, Complainant Hope was participating on the Arlington Backstretch Coordinating Committee, which, on information and belief, was established to improve living conditions on the backstretch. In or around March 2004, members of the committee were invited to tour the backstretch. Complainant Hope attended the tour. While on the tour, Complainant Hope viewed buildings that staff of Respondents Arlington identified as “family housing” for backstretch workers with minor children. Restrictions placed on families living in the backstretch were discussed. At that time, Complainant Hope also had an opportunity to view housing that Respondents’ staff identified as housing for backstretch workers without minor children. Complainant observed differences in the housing provided to backstretch workers with children and backstretch workers without children.
16. In the months following the March 2004 tour, Complainant Hope conducted an investigation of Arlington’s backstretch facilities and talked with workers who lived there. They learned that backstretch workers with minor children suffered worse living conditions than those without minor children. As a result of the tour and subsequent investigation, on or about June 24, 2004, Complainant Hope filed a fair housing complaint with HUD alleging familial status and national origin discrimination against the backstretch families with children by Respondents Arlington.
17. HUD’s investigation of Complainant Hope’s complaint confirmed that through the end of the 2004 racing season, backstretch families with children were housed in large, densely occupied buildings with no private bathrooms. Further, HUD’s investigation revealed that Respondents assigned over twice the number of tenants to the “family” dorm as it did to the comparable “adult” dorms. In “family” Dorm 2, 460 tenants shared 120 units. By contrast, in “adult” Dorm 1, 204 tenants shared 128 units; and in “adult” Dorms 4-8, only 172 tenants shared 99 units. Through the end of the 2004 racing season, Respondent also exclusively assigned tenants without children to the dorm buildings with private bathrooms.
18. HUD’s investigation therefore concluded that the terms and conditions of housing offered and provided to backstretch workers without children was more desirable than the terms and conditions of housing offered and provided to backstretch workers with children. Specifically, the HUD investigation found that in contrast to backstretch workers without children, backstretch workers with children were offered and rented: units with no private bathrooms; overcrowded units; and units with no air conditioning. Indeed, acceptance of

⁷ 21 of the rooms were “stakes rooms” reserved for use by employees of trainers running horses in a stakes race.

these different and inferior terms and conditions, specifically alleged in the following paragraphs, was a precondition for receiving housing from Respondents.

19. Through the end of the 2004 racing season, Respondents only assigned backstretch workers with children to units in buildings with communal bathrooms, specifically Dorm buildings 2 and 3. By contrast, Dorm buildings 4-8, where Respondents only assigned backstretch workers without children, had private baths and showers. On information and belief, in “family” Dorm 2, approximately 460 persons, 237 of whom were minors, shared approximately 32 toilets, sinks, and shower stalls within 4 communal bathrooms. By contrast, in “adult” buildings 4-8, no more than 3 persons were compelled to share a bathroom. Even in “adult” Dorm building 1, where tenants also shared 4 communal bathrooms, fewer tenants were forced to share the bathrooms. “Adult” Dorm 1 and “family” Dorm 2 have the same number of communal bathrooms. However, in “family” Dorm 2, 256 more tenants used its 4 communal bathrooms than “adult” Dorm 1. Because there are no kitchens or running water in units occupied by backstretch families with children in buildings 2 and 3, the workers and their families used the communal bathrooms for many purposes, including toileting, diaper changing, washing dishes and clothes and preparing food,⁸ endangering the health of those using overcrowded bathrooms.
20. HUD’s investigation revealed that Respondents assigned, and on information and belief, continue to assign, more occupants to dorm units occupied by backstretch workers with children than to dorm units occupied by backstretch workers without children, in most cases, more than double the occupants. HUD’s investigation revealed that, in 2004, Respondents assigned no more than 3 occupants to units occupied by backstretch workers without children, while Respondents assigned more than 5 and even up to 8 occupants to some units occupied by backstretch workers with children. On information and belief, even the new dorms to which Respondents are now assigning backstretch workers with children will have more than 3 occupants per unit.
21. HUD’s investigation further revealed that Respondents assigned in excess of 3 occupants per unit in units occupied by families with children, despite vacancies in Dorm buildings 1, 2 and 3 during the 2004 racing season and open “stakes rooms” in Dorm buildings 4-8. (In 2004, Dorm 1 had 31 vacant units; Dorm 2 had 7 vacant units; Dorm 3 had 27 vacant units; and Dorms 4-8 had 21 vacant units, used as “stakes” rooms.) It also made such room assignments despite being directed by the Health Services Department of the Village of Arlington Heights to assign no more than 3 family members per unit and to offer adjoining units to families with more than 3 family members.
22. Units in buildings 4-8, where Respondents only assign backstretch workers without children, are outfitted with wall air-conditioners at no expense to the occupant. Backstretch workers with children, who Respondents assigned to buildings 2 and 3, lived in units without wall air-conditioners and were expected to provide window air-conditioners at their own expense or to go without.

⁸ The backstretch has already suffered a serious outbreak of Shigellosis in one of the “family” buildings—in 1994—which is caused by oral, fecal contamination. Mostly children were effected. Respondents did not own the racetrack at that time.

23. By refusing to assign backstretch workers with minor children units in Dorm buildings 1 and 4-8, Respondents have refused to negotiate for the rental of, or otherwise made unavailable or denied a dwelling on the basis of familial status, in violation of 42 U.S.C. § 3604(a) of the Act.
24. By assigning backstretch workers with children exclusively to Dorm buildings 2 and 3 and now also to the two new dorm buildings constructed for occupancy for the 2005 racing season, Respondents have engaged in unlawful “steering” on the basis of familial status in violation of 42 U.S.C. § 3604(a) of the Act.
25. By adopting and adhering to a policy that denies backstretch workers with children the opportunity to rent in buildings 1, and 4-8, Respondents have offered housing under different terms and conditions on the basis of familial status in violation of 42 U.S.C. § 3604(b) of the Act.
26. By conditioning the provision of housing on the acceptance of discriminatory terms and conditions, namely that through the end of the 2004 racing season, backstretch workers with children had to live in buildings 2 and 3, and had to accept living conditions inferior to those of the backstretch workers without children, specifically no private bathrooms; more occupants per unit; and no air conditioning, Respondents offered housing under different and inferior terms and conditions on the basis of familial status in violation of 42 U.S.C. § 3604(b) of the Act.
27. By publishing its “adults only,” policy for buildings 1, and 4-8 to backstretch workers, trainers, the Arlington Backstretch Coordinating Committee, Complainant, its own staff and the press, Respondents have made statements that indicate a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination because of familial status in violation of 42 U.S.C. § 3604(c) of the Act.
28. As a result of Respondents’ discriminatory conduct, Complainant Hope has suffered damages, including frustration of its mission and diversion of its resources away from other fair housing activities in which it would be otherwise engaged, including housing referral, education and outreach, testing and filing other fair housing actions, in order to address Respondents’ discriminatory conduct.

III. PRAYER FOR RELIEF

WHEREFORE, the Secretary of Housing and Urban Development, through the Regional Counsel for Region V, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a), (b) and (c) of the Act and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating on the basis of familial status against any person in any aspect of the purchase or rental, or terms and conditions of the rental, of a dwelling;
3. Directs Respondents to assign dwelling units on an equal basis in all of its backstretch dorm buildings, without regard to family status;
4. Directs Respondents to assign no more than three occupants per dwelling unit in any of its backstretch dorm buildings, regardless of family composition;
5. Awards such damages as will fully compensate Complainant Hope for Respondents' discriminatory conduct frustrating its fair housing mission and diverting scarce resources away from other fair housing activities; and
6. Awards a civil penalty of \$11,000.00 against each Respondent pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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